

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-124467-10

Date: NOVEMBER 15, 2010

RE:

Legend

Decedent

Spouse

Child 1

Child 2

Child 3

Child 4

Trust 1

Trust 2

Trust 3

Trust 4

Date 1

Date 2

Date 3

Trust

Accountant

Year 1

Year 2

Dear :

This letter responds to a letter from your authorized representative dated May 7, 2010 requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate Decedent's generation-skipping transfer (GST) exemption to transfers to Trusts 1 through 4.

The facts and representations submitted are summarized as follows:

On Date 1, a date prior to December 31, 2000, Decedent and his spouse, Spouse, executed Trust, an irrevocable trust. The terms of Trust provided for the creation of four separate trusts, Trust 1, Trust 2, Trust 3, and Trust 4, for the benefit of each of their four children, Child 1, Child 2, Child 3, and Child 4, and each child's issue, respectively.

On Date 1, Decedent transferred cash and marketable securities to Trusts 1 through 4 to be divided equally among the four trusts. On Date 2, a date after December 31, 2000, Decedent transferred cash and marketable securities to Trusts 1 through 4 to be divided equally among the four trusts. Decedent died on Date 3.

Decedent did not file a Year 1 Form 709 to report the Date 1 transfers to Trusts 1 through 4, and, accordingly, Decedent did not allocate his GST exemption to the Date 1 transfers. Decedent retained Accountant to prepare the Year 2 Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, to report the Date 2 transfers to Trusts 1 through 4. On Schedule A, Part 3, Column C of the Year 2 Form 709, Decedent did not elect under § 2632(c)(5) to opt out of the automatic allocation rules of § 2632(c)(1) for purposes of allocating Decedent's GST exemption to the Date 2 transfers to Trusts 1 through 4. However, on line 5 of Schedule C, Part 2 – GST Exemption Reconciliation, on the Year 2 Form 709, Accountant mistakenly allocated less GST exemption to the Date 2 transfers than should have been reported under the automatic allocation rules of § 2632(c)(1).

You have requested the following rulings:

1. The estate of Decedent will be granted an extension of time under § 2642(g) and § 301.9100-3 to allocate Decedent's GST exemption to the Date 1 transfers to Trusts 1 through 4, and the allocations will be based on the value of the Date 1 transfers and will be effective as of such date.
2. The estate of Decedent will be granted an extension of time under § 2642(g) and § 301.9100-3 to report the correct amount of Decedent's GST exemption allocated to the Date 2 transfers to Trusts 1 through 4 under the automatic allocation rules of § 2632(c)(1), and the allocations will be based on the value of the Date 2 transfers and will be effective as of such date.

LAW AND ANALYSIS

Rulings 1 and 2

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a), in effect for the Date 1 transfers, provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted of inflation) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(a), in effect for the Date 2 transfers, provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable. Section 2631(c), in effect for the Date 2 transfers, provides that for purposes of § 2631(a), the GST exemption amount for any calendar year shall be equal to the applicable exclusion amount under § 2010(c) for such calendar year.

Section 2632(c)(1) provides that if any individual makes an "indirect skip" during such individual's lifetime, any unused portion of such individual's GST exemption shall be treated as allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(c)(3)(A) provides that for purposes of § 2632(c), the term "indirect skip" means any any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the

Secretary deems relevant. Section 2642(g)(1)(B) further provides that for purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute. See Notice 2001-50, 2001-2 C.B. 189.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, the executor of Decedent's estate is granted an extension of time of 120 days from the date of this letter to allocate Decedent's available GST exemption to the Date 1 transfers to Trusts 1 through 4 and to report the correct amount of Decedent's GST exemption allocated to the Date 2 transfers under the automatic allocation rules of § 2632(c)(1). The allocations will be effective as of the date of the transfers to the trusts and will be based on the fair market value of the property transferred for federal gift tax purposes.

The executor should make the allocations on supplemental Forms 709. The supplemental Forms 709 should be filed on behalf of the estate with the Cincinnati Service Center at the following address: Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Forms 709. A copy is enclosed for this purpose.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Except as expressly provided herein, we express no opinion on the federal tax consequences of the transactions under the cited provisions or under any other provisions of the Code. Specifically, we are not ruling on whether Trusts 1 through 4 will have a zero inclusion ratio as a result of the allocations of Decedent's GST exemption to the Date 1 and Date 2 transfers to the trusts.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

The rulings in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Associate Chief Counsel
Passthroughs & Special Industries

By: Lorraine E. Gardner, Senior Counsel
Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes
Copy of this letter